

REMARKS

A. Summary of Board Decision

As mentioned previously, the Board remanded the application to the Examiner in order for him to “consider a rejection of claims 15 and 23 through 32 under 35 U.S.C. § 112, first paragraph.” In particular, the Board pointed to an apparent inconsistency between the valves recited in independent claim 15 and the valves recited in dependent claim 25. The Board pointed out that it appeared that the valves of claim 15 were supported by valves 20 and 21 in FIG. 1 of the description while the valves of claim 25 appeared to be supported by valves 14 and 16 of FIG. 1 of the description. With this understanding in mind, the Board further added that it appeared that the abort switch recited in claim 15 which opened a closed one of the recited valves was not supported by the original disclosure. In order for the abort switch of claim 15 to be supported by the original disclosure there was a need for the abort switch 36 of FIG. 2 to control one of the valves 20 and 21. The Board pointed out that this was not the case since the original disclosure described the abort switch 36 opening valve 14.

B. Examiner’s Telephonic Interview

In view of the Board decision, the undersigned sent a draft Amendment to Examiner Mendoza on April 12, 2007 via facsimile. On May 1, 2007, Examiner Mendoza telephoned the undersigned regarding the Board decision. The undersigned explained the Board decision to Examiner Mendoza. While Examiner Mendoza agreed that that the Amendment overcame the concerns of the Board, he indicated that he had reservations as to the proposed deletion of phrases associated with the term “ventilator assembly.” It was agreed to retain the “ventilator assembly” language and to amend the Specification to clarify what a ventilator assembly would

entail in one of the described embodiments of the invention. Such an amendment to the Specification is being made herein. In addition, the Examiner should note that the phrase “an apparatus for identifying a specific air flow direction and lung volume of the patient” has been deleted in claims 15 and 33. In its stead the phrase “an apparatus for identifying a specific lung volume of the patient” has been inserted in claims 15 and 33 to clarify the structure of the ventilator assembly so as to be consistent with the amended description of the Specification. Since the added language is similar to the language deleted, it is not believed that the language presents new issues or would involve new issues.

C. Further Discussion of Amendment

Faced with the above apparent contradiction raised by the Board and the telephonic interview discussed above, Applicants are presenting the present amendments to the claims. In particular, claim 25 has been amended to delete the phrases “and operably associated with the computer” that regard the “first valve” and “second valve” recited in claim 25. With this amendment, the first and second selectively operable valves of claim 15 are supported by valves 14 and 16 in FIG. 1 of the description and the first and second valves of claim 25 are supported by valves 20 and 21 in FIG. 1 of the description. Accordingly, there is support for the abort switch of claim 15 in view of abort switch 36 of FIG. 2 which opens valve 14. Thus, the Board’s concerns regarding claim 15 have been addressed by the present amendment.

Besides overcoming the concerns of the Board, claim 15, as amended, should still be deemed patentable over the art of record since it still recites “an abort switch adapted to halt the apparatus for administering radiation therapy and open a closed one of the first and second selectively operable valves.” As held by the Board, “[n]o such structure is taught or suggested in

the patents relied upon by the examiner” (Board decision, page 8). Accordingly, claim 15 and its dependent claims should still be allowed.

Regarding the other amendments being proposed, claims 15 and 33 have been amended to delete any reference to air flow direction since they are not needed for patentability. Claim 23 has been amended to delete any reference to the first and second selectively operable valves in order to address the issues raised by the Board mentioned above.

Claims 23 and 34 have been amended to clarify that the apparatus for identifying a specific lung volume of the patient comprises or is a pneumotach. This amendment is supported at page 12, lines 14-18 of Applicants’ Specification. Claim 32 has been amended to recite that the ventilator assembly includes a mouthpiece attached to the apparatus for identifying a specific lung volume of the patient. FIG. 1 of Applicants’ disclosure shows that mouthpiece 23 is attached to pneumotach 22.

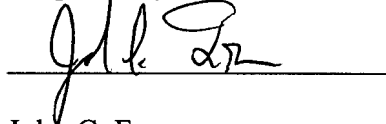
Claims 29-31 have each been amended to replace “one-way” with “scissors” in order to have support in Applicant’s Specification in view of the issues raised by the Board. The amendments are supported at page 9, line 7 of Applicants’ Specification which states that valves 14 and 16 are scissors valves.

CONCLUSION

In view of the arguments above, Applicants respectfully submit that all of the pending claims 15 and 23-38 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application and believes that an interview would

be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Freeman", is written over a horizontal line.

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Dated: May 3, 2007